

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH AND GAME

Call to Order: By **VICE CHAIRMAN DAN MCGEE**, on February 4, 2003
at 3 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Daniel (Dan) McGee, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Ken (Kim) Hansen (D)
Sen. Dale Mahlum (R)
Sen. Trudi Schmidt (D)
Sen. Bill Tash (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Mike Sprague, Chairman (R)
Sen. Debbie Shea (D)

Members Absent: None.

Staff Present: Mary Vandembosch, Legislative Branch
Jane M. Hayden, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 237, 02/04/2003
Executive Action: SB 122; SB 166; SB 169; SB 184;
SB 187

HEARING ON SB 237

Sponsor: SENATOR KEITH BALES

Proponents: John Bloomquist, Stockgrowers Association

Opponents: Jeff Hagener, Director of Fish, Wildlife, and
Parks Department
Melissa Tuemmler, Trapper and County Planner

Opening Statement by Sponsor:

SENATOR KEITH BALES, SD 1, testified that Senate Bill 237 is designed to correct things that have been overlooked in the past. A few years ago there was an effort to get rid of the "slob hunter," who does illegal things while hunting and fishing. These "slob hunters" should be punished and discouraged from doing illegal acts again. Several Legislative sessions ago, there was legislation passed that dramatically increased fines for various hunting offenses. At that time, I thought the legislation was appropriate. Soon after I realized that all of the offenses that had severe penalties left out an increase for the offense of illegal trespass.

SENATOR BALES stated that over the years, there has been an effort to improve landowner/sportsmen relationships. Of all the fish and game violations, landowners and good sportsmen are both most concerned with illegal trespass. SB 237 addresses illegal trespass. Criminal trespass is the so-called "orange paint" law. This law mandates that landowners who do not want anyone trespassing on their property must paint fence posts and access sites with fluorescent orange paint. Citing someone under the "orange paint" law does not apply under Fish and Game law, and therefore, their hunting license would not be suspended. In fact, trespassers can be prosecuted multiple times under the "orange paint" law and never have their licenses suspended.

SENATOR BALES explained that SB 237 is an attempt to tie together the criminal trespass law and the Fish and Game trespass law. **SENATOR BALES** then read from the Montana Codes Annotated (MCA's) concerning the differences between the criminal trespass law and the Fish and Game illegal trespass law. In essence, the two laws have the same language, but the Fish and Game law increases the penalties for subsequent offenses. FWP thinks the illegal trespass law should apply only to posted land, and an amendment is being offered to change SB 237 to reflect that change. The extra fines would apply to where the land is posted.

Proponents' Testimony:

John Bloomquist, Montana Stockgrowers Association, testified that the only reason his Association is a proponent of SB 237 is because **SENATOR BALES'** proposed the amendment. Otherwise, SB 237 would be unacceptable to his Association and the elevated penalties would not be consistent with SB 169. With the amendment, what this legislation would say is, if posted, it is provided in Title 45, MCA, then these elevated penalties would

be applicable. If the land was not posted, the penalties would be under the existing law. Therefore, if amended, the Montana Stockgrowers Association is in favor of SB 237.

Opponents' Testimony:

EXHIBIT(fis24a01)

Jeff Hagener, Director of the Montana Department of Fish, Wildlife, and Parks (FWP), testified that as currently proposed, the FWP Commission is against SB 237. After hearing **SENATOR BALES** talk about the proposed amendment(s), amending SB 237 may pacify many of the Commission's concerns.

Mr. Hagener then read from his written exhibit testimony, verbatim, until after he finished reading paragraph four. At this point, he interjected that the way 87-3-304, MCA, is written, the burden is placed fully on the hunter to remain on legally accessible property. In the discussion of SB 169 on January 30, 2003, it was stated many times over that figuring out where property boundaries are can be difficult when there is so much unmarked property. **Mr. Hagener** resumed reading from his written exhibit testimony.

Melissa Tuemmler, a Trapper and a County Planner from the Townsend area, testified that SB 237, as written, is outrageous. The current laws are effective in controlling criminal trespass. Trappers are typically asked to come onto property by the landowner to take care of a problem whether it is controlling damage or some livestock issue. Even as a County Planner with access to ownership documents, it is easy to make mistakes concerning property lines and who owns property. Current ownership maps are very outdated, so it is very easy to be on someone's property, accidentally. As professional trappers, and the Montana Attorney General's Office has determined that trapping is a commercial versus a recreational activity, SB 237 would contribute to trappers risking the loss of their licenses and potentially their livelihoods. We are firmly opposed to SB 237 because the penalties are extreme.

Informational Testimony: None given.

Questions from Committee Members and Responses:

SENATOR KEN HANSEN asked **Melissa Tuemmler** how trapping works on state-owned land as far as buying parcels. Ms. Tuemmler responded that a trapper gets a permit, pays for the parcels,

and has to establish certain sections. **SENATOR HANSEN** asked **Melissa Tuemmler** if there is deeded ground, can a trapper get to their permitted State sections if they have to cross private property. **Ms. Tuemmler** explained that if the private property was between the road and the State parcel, a trapper would have to obtain permission to cross. The trapper must get access permission and that if they cannot get access permission, they lose the State ground for which they bought the deed.

SENATOR JOE TROPILA asked **Melissa Tuemmler** if SB 237 were amended, would she still oppose it. **Ms. Tuemmler** stated that she would have to see the amendments, but definitely would oppose it unless "loss of license" was written out of the bill.

SENATOR GREG BARKUS asked **SENATOR KEITH BALES** what posting requirements are being proposed in the amendments. **SENATOR BALES** explained that the posting requirements would be the same as in the criminal trespass statutes.

SENATOR TRUDI SCHMIDT asked **SENATOR KEITH BALES** about the definition of "slob hunters" and where it came from. **SENATOR BALES** replied that the term "slob hunter" was coined several years ago so that relationships between landowners and hunters could be improved by getting rid of the "slob hunter." The wish to improve relationships also started the drive for the bumper stickers that read "Ask First" (before hunting on private property).

Closing by Sponsor:

SENATOR KEITH BALES testified that he would work with the Fish, Wildlife, and Parks Department to get good amendments to SB 237. In response to **SENATOR HANSEN's** concerns about having to cross private property, it should be standard procedure to obtain permission before going onto or through private property for whatever purpose. **SENATOR BALES** stated that he wants to amend SB 237 and make it a bill that everyone can support.

EXECUTIVE ACTION SB 122

Motion/Vote: **SENATOR GREG BARKUS** moved for **DO PASS** on **SB 122**. **SENATOR TRUDI SCHMIDT** moved for **DO PASS** on the **AMENDMENTS**. **SENATOR JOE TROPILA** asked **Jeff Hagener, Director, FWP**, if he was satisfied with the amendments. **Jeff Hagener** stated that the amendments were a product of their discussion

with **SENATOR BILL TASH**, so FWP agrees with SB 122 as amended.

Vote: Motion that SB 122's **AMENDMENTS PASS**, passed unanimously.

Vote: Motion that SB 122 **DO PASS AS AMENDED**, passed unanimously.

EXECUTIVE ACTION SB 166

Motion/Vote: **SENATOR KEITH BALES** moved for **DO PASS** on **SB 166**, and for **DO PASS** on the **AMENDMENTS**, too. **SENATOR TRUDI SCHMIDT** stated that she felt better to have the Yellowstone Caviar Program and FWP agree on the amended bill. **SENATOR GREG BARKUS** asked **Jeff Hagener** if the amended 70/30 percent split would cover their research costs. **Mr. Hagener** answered in the affirmative.

Vote: Motion that SB 166's **AMENDMENTS PASS**, passed unanimously.

Vote: Motion that SB 166 **DO PASS AS AMENDED**, passed unanimously.

EXECUTIVE ACTION SB 169

Discussion: **SENATOR GREG BARKUS** moved to **INDEFINITELY POSTPONED SB 169**. Discussion between **SENATORS BALES, BARKUS, HANSEN, and SCHMIDT**. **SENATOR BARKUS** stated that he is an avid bird hunter, but felt this was a horrible piece of legislation. **SENATOR BARKUS** further stated that SB 169 would cut off all opportunity for bird hunters and that good hunters already ask first and try to understand where the boundaries are. **SENATOR TRUDI SCHMIDT** stated that SB 169 was trying to address the "bad" ten percent of all hunters and was shocked by the threatening correspondence she had received from people if SB 169 passed. **SENATOR KEITH BALES** stated that many hunters say they asked to hunt on private property, but really did not, until the law was passed to mandate it, and he thinks SB 169 is a poor bill. **SENATOR KEN HANSEN** urged the Committee to vote "No" on SB 169 because it was not a good bill and would cause more controversy between landowners and hunters. **SENATOR HANSEN** stated that he is both. **SENATOR JOE TROPILA** asked **SENATOR DALE MAHLUM** if he was going to amend this bill. **SENATOR MAHLUM** answered in the negative.

Motion/Vote: **SENATOR GREG BARKUS** moved that SB 169 **BE INDEFINITELY POSTPONED**. Motion carried 4-3.

The Committee members voting to Indefinitely Postpone SB 169 were **SENATORS BALES, BARKUS, HANSEN and McGEE**. The members voting against to Indefinitely Postpone SB 169 were **SENATORS MAHLUM, SCHMIDT and TROPILA**.

EXECUTIVE ACTION SB 184

Motion/Vote: SENATOR JOE TROPILA moved to **TABLE SB 184.**

The Committee members voting to table the bill were **SENATORS BARKUS, McGEE, SCHMIDT and TROPILA.** The members voting against tabling the bill were **SENATORS BALES, HANSEN and MAHLUM.**

Vote: Motion that SB 184 BE TABLED passed 4-3.

EXECUTIVE ACTION SB 187

Discussion/Motion: SENATOR KEITH BALES moved for **DO PASS** on **SB 187.** SENATOR DAN MCGEE stated that he thought DNRC and FWP had a \$2 fee in a House bill already that would void SB 187, if it is passed. SENATOR TRUDI SCHMIDT stated she would vote "No" on this bill because it would impact the collection of child support payments. SENATOR BALES said SB 187 would lose a lot of money for DPHHS and would close the barn door after the horse was gone. SENATOR BILL TASH made a substitute motion to **INDEFINITELY POSTPONE.** SENATOR TROPILA called the question.

Vote: SENATOR TASH moved that SB 187 BE INDEFINITELY POSTPONED. Motion carried 6-1 with MAHLUM voting no.

ADJOURNMENT

Adjournment: 4:10 P.M.

SENATOR MIKE SPRAGUE, Chairman

JANE M. HAYDEN, Secretary

MS/JMH

EXHIBIT (fis24aad)